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ACTION EB-07

INFO OCT-01 ISO-00 AGR-05 CEA-01 CIAE-00 COME-00 DODE-00

FRB-03 H-02 INR-07 INT-05 L-03 LAB-04 NSAE-00 NSC-05

PA-01 AID-05 CIEP-01 SS-15 STR-04 TAR-01 TRSE-00

USIA-06 PRS-01 SP-02 FEAE-00 OMB-01 OIC-02 AF-06

ARA-06 EA-07 EUR-12 NEA-10 IO-10 /133 W

----- 127292

R 221616Z DEC 75

FM USMISSION GENEVA

TO SECSTATE WASHDC 7336

INFO AMEMBASSY BONN

AMEMBASSY CANBERRA

AMEMBASSY ISLAMABAD

AMEMBASSY LONDON

AMEMBASSY NEW DELHI

AMEMBASSY OTTAWA

AMEMBASSY ROME

AMEMBASSY SINGAPORE

AMCONSUL HONG KONG

USMISSION EC BRUSSELS

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E.O. 11652: N/A

TAGS: GATT, ETRD

SUBJECT: TSB SESSION DECEMBER 15-19

SUMMARY. IN LONGEST CONTINUOUS SESSION TO DATE, TSB: A)
OPENED HEARING OF PAKISTAN'S COMPLAINT RE EC'S PHASE-OUT PROGRAM
FOR ELIMINATION RESIDUAL RESTRICTIONS ON TEXTILE EXPORTS TO
UK AND FRANCE; B) CONSIDERED CANADA-HONG KONG REQUEST FOR
TSB INTERPRETATION PARA 1 ANNEX B; C) ESTABLISHED PROCEDURE
FOR CONSIDERATION NOTIFICATIONS RECEIVED UNDER MFA ART 3:8
CONCERNING RENEWAL OF EARLIER ART 3 BILATERALLY AGREED RE-
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STRAINTS; AND, D) REACHED DECISION ON AUSTRALIA-SINGAPORE

ART 3 DISPUTE.

1. ON DEC 11 PAKISTAN MISSION HERE FILED WITH TSB CHAIRMAN 15-PAGE BRIEF OF COMPLAINT AGAINST EC/S ACTION IN IMPOSING A "PHASE-OUT" PROGRAM OF ELIMINATION OF RESIDUAL RESTRICTION FOLLOWING SIGNATURE OF PAK-EC BILATERAL. GOP ALSO REQUESTED AND WAS GRANTED URGENT CONSIDERATION BY TSB. SINCE GOP NOT NOW REPRESENTED ON TSB, EC, ON VERY NOTICE, SENT SUTTON FROM BRUSSELS TO REPRESENT EC VICE KLARIC WHO I EC MEMBER OF BODY.

2. GOP GENEVA REP SALEEM (FORMER MEMBER TSB), SPEAKING FROM BRIEF, MADE REASONED STATEMENT MAIN POINTS OF WHICH WERE: A) RESIDUAL RESTRICTIONS TO BE INCLUDED IN PROPOSED PHASE-OUT PROGRAM AROSE FROM PREVIOUS BILATERAL AGREEMENTS AND THEREFORE FELL WITHIN THE PURVIEW OF MFA ART 2:3; B) THAT ART 2:3 DID NOT PROVIDE FOR A PHASE-OUT PROGRAM AS PROVIDED IN ART 2:3; C) THAT, EVEN IF EC ARGUED THAT RESIDUAL RESTRAINTS WERE UNILATERALLY IMPOSED, THEY COULD NOT BE JUSTIFIED UNDER ART 2:2 SINCE MARCH 31, 1975 WAS TERMINAL DATE FOR NOTIFICATION SUCH PHASE-OUT PROGRAMS; AND, FINALLY, D) THAT EC REPS HAD AT NO POINT NEGOTIATIONS UP TO AND INCLUDING INITIALLING OF BILATERAL ON JULY 4 GIVEN ANY INDICATION OF INTENT TO SUBJECT PRODUCTS NOT COVERD INBILATERAL TO FURTHER RESTRICTION IN PHASE-OUT PROGRAM. IN FACT, GOP COMMERCE PERM SEC NAIK, PROMPTLY ON RETURN TO PAKISTAN FROM JULY 4 INITIALLING WITH MAYNELL, HAD ISSUED PRESS RELEASE INFORMING TRADE THAT ALL ITEMS NOT COVERED IN EC-PAK BILATERAL WERE HENCEFORTH FREE OF RESTRICTIONS.

3. EC REP SUTTON, IN RESPONSE: A) CASTIGATED GOP FOR BRINGING ISSUE BEFORE TSB WITHOUT HAVING "EXHAUSTED" THE BILATERAL CONSULTATION REMEDIES FOUND IN THE EC-PAK BILATERAL; B) IN EFFECT, ACCUSED PAK PERM SEC OF MISREPRESENTING FACTS REGARDING FAILURE EC TO INFORM GOP NEGOTIATORS OF PHASE-OUT PLANS; C) POINTED OUT THAT MEYNELL HAD INFORMED NAIK OF SUCH INTENTION IN COURSE OF INTIALLING AGREEMENT WHERE MEYNELL AND NAIL LIMITED OFFICIAL USE

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WERE ALONG TOGETHER; AND, D) CONCLUDED THAT "EC THAD EVIDENCE TO SUPPORT ITS CONTENTION IN THE FORM OF MINUTES OF NEGOTIATION AND TAPES OF THE NAIK-MEYNELL PRIVATE INITIALPNG SESSION."

4. SALEEM, IMMEDIATELY AROSE TO INFORM THE BODY THAT THE GOP NEGOTIATORS HAD NOT BEEN SHOWN ANY "MINUTES OF THE NEGOTIATION" BY THE EC REPS AND, FURTHER, THAT HE

WAS SHOCKED TO HEAR THAT MEYNELL HAD TAPED A PRIVATE CONVERSATION WITHOUT THE KNOWLEDGE OF PERM SEC NAIK. IN THE ENSUING SILENCE, EC TSB REP KLARIC INTERVENED TO ASK THAT FURTHER DISCUSSION OF THE MATTER BE DEFERRED UNTIL THE MORNING OF DEC 13 WHEN MAYNELL WOULD COME FROM BRUSSELS TO REPRESENT THE EC. GIVEN THE NASTY TURN MATTERS HAD TAKEN FOLLOWING SUTTON'S REMARKS AND SALEEM'S COMMENT THEREON, THE TSB INSTANTLY AND UNANIMOUSLY APPROVED THE DEFERRAL.

5. MEYNELL AAPPEARED MORNING OF DEC 13 AND AFTER LENGTHY PRIVATE TALK WITH SALEEM (WHEN HE REPORTEDLY REACHED UNDERSTANDING THAT NEITHER SIDE WOULD REFER TO QUESTION OF GOOD OR BAD FAITH BETWEEN EC AND GOP NEGOTIATORS) BEGAN WITH WHAT AMOUNTED TO DISCLAIMER OF SUTTON'S REMARKS FOLLOWED BY LENGTHY, RAMPLING STATEMENT ON EC'S VIEWS OF ITS RIGHT TO IMPOSE PHASE-OUT PROGRAM. IN QUESTIONING BY MEMBERS, MEYNELL WAS UNABLE TO SAY WHETHER ALL OF THE RESUDUAL RESTRICTION ORIGINATED IN BILATERAL AGREEMENTS OR WHETHER THEY WERE IN PART BILATERAL OR UNILATERAL, AND, IF SO, WHICH PART WAS WHICH. TO MEYNELL, THIS WAS "VERY COMPLEX MATTER" REQUIRING FURTHER STUDY AND RESEARCH BY EC. IN CONCLUSION, MEYNELL TRIED TO ARGUE THAT THE EC'S "INDICATIVE PHASE-OUT PROGRAM" NOTIFIED TO THE TSB ON MARCH 27 ESTABLISHED THE EC'S RIGHT TO PURSUE SUCH PROGRAMS. HONG KONG REP DORWARD SHOT DOWN THIS ARGUMENT BY QUOTING FROM EC'S MARCH 27 LETTER OF NOTIFICATION (SIGNED BY MEYNELL) A CLEAR STATEMENT THAT NOTIFICATION APPLIED ONLY TO THOSE COUNTRIES WITH WHICH EC DID NOT INTEND TO NEGOTIATE BILATERAL AGREEMENTS.

6. AT THIS POINT, MEYNELL STATED HE HAD TO RETURN LIMITED OFFICIAL USE

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IMMEDIATELY TO BRUSSELS TO RESUME NEGOTIATIONS WITH BRAZIL WHICH HE HAD HAD TO INTERRUPT IN ORDER APPEAR BEFORE TSB. MEYNELL CONCLUDED WITH A THREAT SAYING HE WOULD RETURN TO NEXT TSB SESSION FULLY PREPARED TO DEFEND EC'S CASE WHICH, IF NOT ACCEPED BY TSB, WOOULD RESULT IN THE RENOGIATION OF ALL THE EC'S BILATERALS OR FURTHER UNILATERAL ACTIONS BY MEMBER STATTES.

7. AFTERNOON DEC 13, TSB DISCUSSED EC-GOP PROBLEM BASED ON INFORMATION AVAILABLE FROM PRECEDING DISCUSSIONS. ALL EXPORTIN COUNTRY REPS PUSHED FOR IMMEDIATE REJECTION OF EC'S CLAIM ON BASIS THAT ACTION WAS NOT JUSTIFIED UNDER EITHER PARAGRAPH 3 OR PARAGRAPH 2 OF ART 2. WHILE IMPORTING COUNTRY REPS (JAPAN REMAINED TOTALLY SILENT) WERE ALL PRIVATELY IN AGREEMENT THAT

EC HAS NO LEGAL BASIS FOR ITS CLAIM OF PHASE-OUT
RIGHTS, EXPRESSED THE OPINION THAT A PRECIP-
ITATE DECISION BY THE TSB COULD ONLY COMPLICATE THE
PROBLEM FOR BOTH THE EC AND ITS BILATERAL PARTNERS.
US REP STATED HIS BELIEF THAT THERE IS A CHANCE THAT
EC CAN WORK OUT THE ISSUE BILATERALLY WITH ITS BI-
LATERAL AGREEMENT PARTNERS (IT HAS DONE SO ALREADY

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WITH JAPAN) IF GIVEN A BREATHING SPACE. THIS VIEW
EVENTUALLY PREVAILED AND THE TSB ISSUED THE FOLLOWING

STATEMENT: "THE TSB HEARD STATEMENTS FROM REPRESENTATIVES
FO PAKISTAN AND THE EEC AND IS STILL EXAMING
THE CASE. IN THE INTERIM, IN ORDER TO AVOID DAMAGE TO
THE TRADE, THE TSB URGED THE COMMUNITY AND PAKISTAN, IN
THE SPIRIT OF ART 3:7, TO ENTER INTO CONSULTATIONS
PROMPTLY SO AS TO INSURE THAT TRADE DURING THE PERIOD
IN WHICH THIS MATTER IS UNDER CONSIDERATION BY THE TSB
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WOULD NOT BE FRUSTRATED".

8. IN DISUCSSUING THIS LANGUAGE WITH EC REP KLARIC, US
REP RECEIVED CLEAR INDICATION THAT GOP REFERRAL TO TSB
HAD CAUGHT EC IN GREAT STATE OF DISARRAY COMING AS IT
DID ON HEELS OF PROBLEMS COMMISSION HAD HAD WITH UK
(AND FRANCE) ON NEW TEXTILE RESTRAINTS. US REP RECEIVED
FURTHER IMPRESSION THAT EC HAD NEVER HAD THE INTENTION
TO IMPOSE UNILATERALLY A PHSE-OUT PROGRAM ON THE COUNTRIES
WITH WHICH IT WAS NEGOTIATING BILATERALLY UNTIL
THE UK SITUATION DETERIORATED AND JAPAN HAD INDICATED
ITS ACCEPTANCE OF SUCH A PHASE-OUT.

9. US REP SUGGESTS WASHINGTON CONSIDER ALL ASPECTS AND
IMPLICATIONS THIS PARTICULAR PROBLEM FOR FUTURE OF MFA.
IT SEEMS ABUNDANTLY CLEAR THAT TSB WILL HAVE TO FIND
AGAINST EC'S CONTENTION UNLESS EC CAN SOLVE THE PROBLEM
BILATERALLY WHICH, OBVIOUSLY, WILL BE MOST DIFFICULT.
ONE THING SEEMS EVIDENT AND THAT IS THAT COMMISSION PROB-
ABLY HAD A RESTRAINING INFLUENCE ON UK' RECENT
TEXTILE ACTIONS SIMPLY BECAUSE OF THE RESIDUAL PHASE-OUT
TACTIC IT IS FOLLOWING. ALSO, DENIAL THIS RIGHT BY
TSB CAN BE EXPECTED BRING OUT FRENCH PROTECTIONISTS IN
DROVES. PAKISTAN IS ONLY THE FIRST ROUND; INDIA
AND HONG KONG WILL ALSO PURSUE MATTER IN TSB UNLESS
THEIR BILATERAL EFFORTS IN LONDON AND PARIS ARE SUCCESS-
FUL (AN EFFORT WHICH, BY THE WAY, CAUSES THE COMMISSION MUCH
PAIN).

10. BODY DEVOTED BETTER PART OF A DAY TO CANADA-HONG
KONG QUERY ON INTERPRETATION PARA 1 ANNEX A. DESPITE
FACT THAT EXAMINATION OF SECRETARIAT'S RECORDS OF MFA
NEGOTIATION CLEARLY INDICATED THAT LANGUAGE IN PARA 1
ANNEX B WAS INCLUDED IN RECOGNITION OF PROBLEM CANADA
HAD WITH ITS DOMESTIC PROCEDURES, DORWARD WAS ABLE
OBTAIN FULL SUPPORT OF EXPORTING COUNTRY MEMBERS TO HIS
THESIS THAT LANGUAGE HAD TO BE TAKEN AS WRITTEN EVEN IF
HIS INTERPRETATION OF LANGUAGE RENDERED IT MEANINGLESS
WHICH IT DOES. US, EC AND CANADA REPS ALL HELD VIEW
THAT LANGUAGE: A) THOUGH POORLY DRAFTED, WAS NOT
MEANINGLESS; B) THAT INTENT OF THE NEGOTIATORS WAS

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EVIDENT FROM THE RECORD; AND, C) THAT THE EXTRA 2 MONTHS ALLOWED FOR DOMESTIC PROCEDURES WAS A PROVISIO TO PERMIT COUNTRIES WITH SUCH PROCEDURES TO COMPLETE THEM WITHOUT BEING PENALIZED INsofar AS THE BASE PERIOD WAS CONCERNED. WITH BOTH SIDES HOLDING THEIR RESPECTIVE VIEWS, TSB COULD NOT ACHIEVE CONSENSUS AND THUS WAS UNABLE REACH CONCLUSIN AND RECOMMENDED THAT CANADA AND HONG KONG "MAKE EVERY EFFORT TO SEEK TO RESOLVE BILATERALLY THE PRACTICAL DIFFICULTIES WHICH HAD GIVEN RISE TO THE REFERENCE" (TO THE TSB).

11. AFTER SOME DISCUSSION OF THE PROPER PROCEDURE FOR HANDLING NOTIFICATIONS SUBMITTED UNDER ART 3:8, THE TSB RECOMMENDED TO MFA PARTICIPANTS THAT, " AT THE TIME WHEN A REQUEST FOR CONSULTATIONS WITH A VIEW TO SUCH RENEWAL IS MADE BY AN IMPORTING COUNTRY, THE CHAIRMAN OF THE TSB SHOULD BE SO INFORMED AND A DETAILED FACTUAL STATEMENT OF THE REASONS FOR THE CONTINUING NECESSITY FOR THE RE- STRAINTS SHOULD BE SENT TO HIM FOR HIS INFORMATION. IN REVIEWING ANY RENEWED AGREEMENTS REACHED, THE TSB WOULD FOLLOW ITS USUAL PROCEDURES". THIS QUESTION AROSE WHEN SOME COUNTRIES NOTIFIED EXTENSIO OF ART 3 ACTIONS WITHOUT ANY ACCOMPANYING INFORMATION TO ASSIST IN TSB REVIEW OF THE ACTION.

12. FOLLOWING THE TSB DECISION IN THE AUSTRALIA-PHILIP- PINES DISPUTE, SINGAPORE AND AUSTRALIA, SEPARATELY INFORMED THE TSB THAT CONSULTATIONS RECOMMENDED BY THE TSB IN THEIR CASE COULD NOT BE UNDERTAKEN BECUASE: A) SINGAPORE REFUSED TO CONSULT UNDER ART 3 AS AUSTRALIA INSISTED; AND B) AUSTRALIA REFUSED TO CONSULT UNDER ART 4 AS SINGAPORE INSISTED. SINGAPORE REQUESTED IMMEDIATE CONSIDERATION OF ITS DISPUTE. AFTER ASCER- TAINING FROM BOTH PARTIES THAT NO PROGRESS WAS POSSIBLE, THE TSB THIS SESSION REACHED THE FOLLOWING CONSENSUS ON FINDINGS AND RECOMMENDATIONS:
QUOTE. AFTER A FURTHER EXAMINATION OF ALL THE RELEVANT EVIDENCE AVAILABLE AT THE TIME THE AUSTRALIAN IMPORT RESTRICTIONS WERE IMPOSED, THE TSB WHILE CONSIDERING THERE MAY HAVE BEEN GROUNDS FOR CONCERN ON THE PART OF AUSTRALIA ARISING FROM HIGH RATES OF INCREASE OF IMPORTS
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INTO AUSTRALIA OF KNITTED TOPS, INCLUDING A HIGH RATE OF

INCREASE OF IMPORTS OF KNITTED TOPS FROM SINGAPORE,
NOTED THAT THE QUANTITATIVE LEVEL OF IMPORTS OF KNITTED
TOPS FROM SINGAPORE WAS MINIMAL, AND FURTHER NOTED THAT
AUSTRALIA DID NOT APPEAR TO HAVE TAKEN INTO CONSIDERATION
THE ARTICLES OF ARTICLE 6 OF THE ARRANGEMENT.
ACCORDINGLY THE TSB WAS UNABLE TO FIND THAT THE AUSTRALIAN
RESTRICTION WAS CONSISTENT WITH THE PROVISIONS OF THE
ARRANGEMENT, AND RECOMMENDED A PROMPT REVIEW OF THE
MEASURE AS ENVISAGED IN THE ARTICLE 3, PARA 5 (III).
IN MAKING THIS RECOMMENDATION, THE TSB NOTED THAT , DESPITE
THEIR INABILITY TO FIND A COMMON BASIS ON WHICH TO
RESUME NEGOTIATIONS, BOTH PARTIES CONTINUED TO INDICATE
A WILLINGNESS TO CONSULT WITH EACH OTHER. THE TSB EXPRESSED
THE HOPE THAT SOME FLEXIBILITY ON THE PART OF
BOTH COUNTRIES COULD OVERCOME EXISTING DIFFICULTIES
AND OFFER OPPORTUNITY FOR MEANINGFUL CONSULTATIONS TO
ARRIVE AT A MUTUALLY SATISFACTORY SOLUTION OF
SUCH PROBLEMS AS NOW EXIST. UNQUOTE. DALE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TEXTILES, EXPORTS, TRADE COMPLAINTS, TRADE CONTROLS
Control Number: n/a
Copy: SINGLE
Draft Date: 22 DEC 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: MorefiRH
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975GENEVA09440
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750444-0305
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19751220/aaaaaqyp.tel
Line Count: 349
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 7
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: MorefiRH
Review Comment: n/a
Review Content Flags:
Review Date: 23 APR 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <23 APR 2003 by MartinML>; APPROVED <07 AUG 2003 by MorefiRH>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: TSB SESSION DECEMBER 15-19 SUMMARY. IN LONGEST CONTINUOUS SESSION TO DATE, TSB: A)
TAGS: ETRD, EPAP, PK, GATT, EEC
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006